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HOUSE RESEARCH ORGANIZATION

daily floor report

Friday, August 27, 2021
87th Legislature, Second Called Session, Number 14
The House convenes at 11 a.m.

One joint resolution is on the Constitutional Amendments Calendar and six bills are on the General State Calendar for second reading consideration today. The joint resolution and bills analyzed in today's *Daily Floor Report* are listed on the following page.

Alma Allen
Chairman
87(2) - 14

HOUSE RESEARCH ORGANIZATION

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Friday, August 27, 2021

87th Legislature, Second Called Session, Number 14

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SUBJECT: Amending constitution to allow bail denial in some circumstances

COMMITTEE: Constitutional Rights and Remedies, Select — favorable, without amendment

VOTE: 10 ayes — Ashby, Clardy, Geren, Jetton, Klick, Landgraf, Longoria, Lozano, Shaheen, White

0 nays

5 absent — S. Thompson, Bucy, A. Johnson, Moody, Neave

SENATE VOTE: On final passage, August 9 — 27-2 (Blanco, Eckhardt)

WITNESSES: No public hearing.

BACKGROUND: Texas Constitution Art. 1, sec. 11 and Code of Criminal Procedure (CCP) art. 1.07 state that all prisoners shall be bailable unless accused of a capital offense when proof is evident.

Other provisions in the Texas Constitution allow judges and magistrates to deny bail in certain situations. District judges have discretion, under Texas Constitution Art. 1, sec. 11a, to deny bail if a defendant is accused of:

- a felony and has been convicted of two prior felonies;
- a felony committed while on bail for a prior indicted felony;
- a felony involving a deadly weapon after a conviction for a previous felony; or
- a violent or sexual offense committed while on probation or parole for a previous felony.

Under Texas Constitution Art. 1, sec. 11b, judges or magistrates may deny bail to those accused of an offense involving family violence if the accused had been released on bail on those charges and the bond was revoked or forfeited because the accused violated a condition of the bond related to the safety of the victim or community.

Texas Constitution Art. 1, sec. 11c allows bail to be denied if a judge or magistrate determines at a hearing that the arrestee violated certain protective orders. Bail may be denied if a person:

- violates an emergency protective order issued after an arrest for family violence;
- violates an active protective order issued by a court in a family violence case, including a temporary ex parte order served on the person; or
- engages in conduct that constitutes an offense of violating any of these court orders.

Sec. 11a defines "violent offense" as murder; aggravated assault, if the accused used or exhibited a deadly weapon during the commission of the assault; aggravated kidnapping; or aggravated robbery. "Sexual offense" is defined as aggravated sexual assault, sexual assault, or indecency with a child.

DIGEST:

SJR 3 would amend the Texas Constitution to expand the conditions under which judges and magistrates were authorized to deny bail and would establish procedures for when bail was denied in these cases. It also would establish requirements for setting conditions of bail.

Denial of bail. Individuals accused of committing a sex offense punishable as a first-degree felony, a violent offense, or continuous human trafficking could be denied bail pending trial if a judge or magistrate determined by clear and convincing evidence after a hearing that requiring bail and conditions of release were insufficient to reasonably ensure the person's appearance in court or the safety of the community, law enforcement, or the victim of the alleged offense.

A judge or magistrate who denied a person bail under these provisions would be required to prepare a written order that included findings of fact and a statement explaining the reason for the denial.
These provisions could not be construed to:

- limit any right a person had under other law to contest a denial of bail or to contest the amount of bail set by a judge or magistrate; or

- require any testimonial evidence before a judge or magistrate made a bail decision under these provisions.

In determining whether clear and convincing evidence existed to deny a person bail under these provisions, judges and magistrates would have to consider the factors they are required to consider when setting bail under general law, including statutory law governing criminal procedure.

"Violent offense" and "sexual offense" would have the meanings established under Texas Constitution Art. 1, sec. 11a.

Conditions of bail. SJR 3 would require that when setting bail, judges or magistrates impose the least restrictive conditions, if any, and the monetary bond or personal bond necessary to reasonably ensure the accused person's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense.

Proposition. The proposed constitutional amendment would be submitted to voters at an election on May 7, 2022. The ballot proposal would read: "The constitutional amendment requiring a judge or magistrate to impose the least restrictive conditions of bail that may be necessary and authorizing the denial of bail under some circumstances to a person accused of a violent or sexual offense or of continuous trafficking of persons."

SUPPORTERS SAY:

SJR 3 would make Texas safer and ensure a fair bail system by expanding the circumstances under which judges and magistrates could deny bail, requiring certain procedures when bail was denied, and requiring that all bail decisions focus on an accused person's appearance in court and on the safety of the community, law enforcement, and victims of an alleged offense.

Currently, bail may be denied and defendants detained pre-trial only in very limited circumstances. Bail decisions under the current system have resulted in high-risk and dangerous defendants with financial means being released before trial. The current system resulted in tragedies such as the 2017 killing of Department of Public Safety trooper Damon Allen, who

was shot during a traffic stop by someone who had been released on bail despite being a repeat offender with a violent past.

SJR 3 would address these concerns by allowing bail to be denied in cases of violent offenses, serious sex offenses, and offenses for continuous human trafficking. Under current law, judges sometimes feel strongly that someone accused of these serious crimes is dangerous and should be kept in detention pretrial, but these judges have limited tools to address the situation. While judges might attempt to keep those accused of these crimes in jail by setting high bail, defendants with resources still can obtain release. The offenses listed in SJR 3 are serious enough that, if warranted by individual circumstances, judges should be able to take actions to keep the public safe and ensure a defendant will return to court.

SJR 3 would give judges and magistrates a tool to use when they deemed it necessary and would establish a fair process to ensure it was used only when appropriate and that the rights of the accused were protected. Current tools have proved ineffective in protecting the community, in some cases with tragic consequences when defendants released on bail have committed serious crimes that harm others. To ensure all relevant issues were considered and bail was denied only in appropriate cases, SJR 3 would require a hearing before bail could be denied and that judges and magistrates make certain findings find by clear and convincing evidence. These provisions would safeguard against denial of bail being routine or being used without the careful consideration of individual cases.

SJR 3 would ensure that that those accused of low-level, nonviolent offenses did not receive excessive bail and that when bail was granted, conditions were appropriate. The proposition would do this by requiring that judges and magistrates impose the least restrictive conditions and that monetary and personal bonds be set to reasonably ensure the accused person's appearance in court and ensure the safety of the community, law enforcement, and the victim of the alleged offense. These provisions would ensure that jails housed only those who should be there pretrial.

It is an appropriate use of criminal justice resources to keep the most dangerous defendants accused of the most serious offenses in jail pretrial when warranted. SJR 3 would balance the use of resources with the

provision that when bail is set, judges and magistrates should impose the least restrictive conditions and bail necessary.

The Texas Constitution long has recognized that there are exceptions to the requirement that bail generally should be made available to criminal defendants. SJR 3 would be in line with current constitutional provisions by allowing bail denial in justifiable circumstances for those accused of the most heinous crimes.

SJR 3 would work with other legislation on bail being considered by the Legislature to result in better qualified magistrates with more tools making informed, fair bail decisions.

CRITICS SAY:

SJR 3 would be too broad an expansion of the circumstances under which bail could be denied and would erode the tenet that granting bail is presumed and should not be denied except in the most limited cases. Pretrial detention should be a rare exception, not something available for multiple crimes that could be first-time offenses. While current law allows pretrial detention in some cases, the law generally is focused on cases in which defendants were repeat offenders with multiple felonies or there were other extraordinary circumstances. Defendants are presumed innocent, and detaining them pretrial inverts that presumption.

Those accused of offenses covered by the resolution could be confined for years, regardless of the strength of the evidence in the case, waiting for a trial that could result in a term of less time than they waited for trial. Allowing bail denial for a broad group of offenses could have a disparate impact on communities that have been disenfranchised historically or overly impacted by the criminal justice system.

Judges and magistrates have tools under current law to use before a trial to monitor defendants accused of serious crimes. These tools include electronic monitoring, house arrest, curfews, drug and alcohol testing, and other restrictive conditions that can be required with release on bail.

SJR 3 could result in bail denials becoming routine, rather than the exception, for those accused of certain crimes. This could increase populations in county jails, straining their resources.

OTHER CRITICS SAY:

To prevent defendants from being kept in jail pretrial when evidence against them was weak, SJR 3 should include a requirement that before bail could be denied, magistrates make a finding about the strength of the evidence indicating an individual's guilt.

NOTES:

SB 6 by Huffman (Smith), the enabling legislation for SJR 3, is on today's General State Calendar.

According to the Legislative Budget Board, the cost to the state for publication of the resolution would be $178,333.

SUBJECT: Making appropriations to governor, state agencies for border security

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 14 ayes — Bonnen, Ashby, C. Bell, Capriglione, Dean, Gates, Holland, Morrison, Raney, Schaefer, Stucky, E. Thompson, VanDeaver, Wilson

8 nays — M. González, Dominguez, Howard, A. Johnson, Julie Johnson, Rose, Walle, Zwiener

5 absent — Jarvis Johnson, Minjarez, Sherman, Toth, Wu

WITNESSES: For — Benny Martinez, Brooks County Sheriff's Office; Roy Boyd, Goliad County Sheriff's Office; Danny Dominguez, Presidio County Sheriff's Office; AJ Louderback, Sheriffs Association of Texas; Joe Frank Martinez, Val Verde County Sheriff; Eusevio Salinas Jr., Zavala County Sheriff's Office; Hans Haakman; (*Registered, but did not testify*: Charles Maley, South Texans Property Rights Association; Raymundo Del Bosque Jr., Zapata County Sheriff's Office; Destiny Hallman; Thomas Parkinson)

Against — Eva DeLuna Castro, Every Texan; Alicia Torres, Grassroots Leadership; Amanda Woog, Texas Fair Defense Project; Kathryn Dyer; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Ananas Khogali-Mustafa, Deeds Not Words; Carisa Lopez, Texas Freedom Network; Beaman Floyd, Texas Impact; Nicholas Basha and Isabel Herrera, Texas Rising; Stephanie Gharakhanian, Workers Defense Action Fund; and 12 individuals.)

On — David Slayton, Office of Court Administration; Sarah Hicks, Office of the Governor; Tom Krampitz, Texas Border Prosecution Unit; Brandon Wood, Texas Commission on Jail Standards; Bryan Collier, Texas Department of Criminal Justice; Steve McCraw, Texas Department of Public Safety; Nim Kidd, Texas Division of Emergency Management; Rodney Kelley and Tracy Norris, Texas Military Department; (*Registered, but did not testify*: Donna Sheppard, Department of State Health Services; Aimee Snoddy, Office of the Governor; Cyrus Reed, Lone Star Chapter

Sierra Club; Brian Barth, Texas Department of Transportation; Mike Novak, Texas Facilities Commission)

DIGEST:

HB 9 would appropriate $1.8 billion in general revenue to seven state entities for border security efforts.

Grants for physical barriers, local efforts. HB 9 would appropriate $1 billion to the Trusteed Programs within the Office of the Governor for border security operations through border security grants.

The Trusteed Programs also would receive an additional $3.8 million in funding for 27 full-time equivalents (FTEs) for training for district and county attorneys on the handling of misdemeanor crimes.

Law enforcement. The bill would appropriate about $301 million to the Texas Military Department for additional personnel to support border security operations.

The Department of Public Safety would receive:

- $133.5 million for 52 weeks of Operation Lone Star surge costs incurred during the two-year period beginning on the bill's effective date;
- $3.4 million to purchase tactical marine unit vessels; and
- $17.9 million for 79 additional full-time FTEs.

Correctional security operations, jail standards. HB 9 would appropriate to the Texas Department of Criminal Justice $273.7 million for correctional security operations.

The bill would appropriate $214,785 to pay an additional three FTEs at the Commission on Jail Standards and for overtime compensation and travel expenses.

Legal system. HB 9 would appropriate about $32.5 million to the Office of Court Administration for indigent legal representation, foreign language interpreters for courts, staff, equipment, and administrative costs. The bill would authorize six FTEs for the agency.

Health services. The bill would appropriate about $5.5 million to the Department of State Health Services to purchase two ambulances, and an additional $10.9 million to purchase ambulances to use at two border security processing centers.

The bill would take effect immediately, and the appropriations would be for the two-year period beginning on the bill's effective date.

SUPPORTERS SAY:

HB 9 would address the crisis at the Texas-Mexico border by supporting state agencies and local governments working to protect Texans and their property. Texas currently is experiencing unprecedented challenges with an extraordinarily high volume of migrants trying to cross the border into the state illegally, as well as drugs and weapons trafficking, human trafficking, and other crimes. Accompanying these crimes are private property damage, threats to private property owners, strains on law enforcement resources, and public health risks related to COVID-19.

Funding in HB 9 would allow the heightened border security efforts the governor launched earlier this year to continue and expand, making Texans safer by securing the international border. While legal immigration and the legal commerce and cultural relationships with Mexico should be supported, the current illegal activities are endangering Texans throughout the state. It is incumbent on the state to take actions because federal officials are not addressing these problems in a way that protects Texans.

HB 9 would continue the state's commitment to making Texas safer through border security, which benefits all Texans. The seriousness and scale of these problems warrant HB 9's investment in physical barriers, law enforcement efforts, and the legal and criminal justice systems.

Grants for physical barriers, local efforts. HB 9 would provide the Trusteed Office of the Governor with grant funding because it is the most effective way to address the fluid situation on the border. Giving the governor grant funds would allow the state the flexibility to efficiently respond to changing needs and to deploy state resources to enforce state and federal laws.

About $750 million in grant funding from HB 9 could be allocated to further efforts the governor announced in June to secure the border and keep Texans safe by building a wall or other structures on the border. This would help address current problems and provide a long-term solution to them.

About $100 million from HB 9 could be allocated to local law enforcement agencies dealing with the current crisis. The governor's office has been working with local authorities to identify their needs, and HB 9 would allow significant funding to flow to those working daily to address serious problems including crime, jail crowding, a large increase in deceased bodies being found, and humanitarian needs.

The funding in HB 9 also would be used by the governor's office to support up to three intake centers and jails for immigrants who were arrested as part of border security efforts.

Law enforcement. HB 9 would support increased law enforcement efforts on the border, including those authorized by the governor's May 2021 disaster declaration. Under the declaration, the governor directed the Department of Public Safety (DPS) to enforce federal and state laws to prevent criminal activity along the border, including criminal trespassing, smuggling, and human trafficking and to help Texas counties.

As part of these efforts, the Texas Military Department (TMD) has been providing crucial support to DPS, and HB 9 would allow those efforts to continue and expand. Currently, TMD has about 700 national guard members assisting DPS with enforcing state criminal laws and helping construct barriers, and HB 9 would provide funding to increase this assistance to about 2,500 personnel.

The bill's appropriation to DPS would fund 52 weeks of surge operations associated with Operation Lone Star, which the governor launched in March 2021. The operation involves about 1,000 DPS troopers, agents, and rangers helping secure the border and fighting the serious crimes tied to the illegal drug trade, human smuggling, and human trafficking. Enforcing all criminal laws, including trespassing, supplements federal

immigration enforcement and can deter others from crossing the border illegally, especially if those crossing are faced with jail time and being turned over to immigration officials. These efforts also would help officials know who had entered Texas and help identify those who could be dangerous. Texans living on the border — like all Texans — deserve justice and safety and to live where criminal laws are enforced.

DPS also would receive funding for marine vessels and additional intelligence operations and support to further its border law enforcement efforts. Additional funds for the governor's Trusteed Programs would go to the Border Prosecution Unit to train law enforcement officers on handling border crimes to ensure that cases were handled properly.

Correctional security operations, jail standards. HB 9 would give TDCJ funds for converting and operating one of its facilities as a jail for migrants who had been arrested on state charges and for converting two other units if necessary. The bill also would return to the agency funds that were moved from its budget earlier this year so that construction on the border wall could begin.

Legal system. The bill would support the legal system needed to handle the influx of migrants by providing the Office of Court Administration with funding for visiting judges, court interpreters, lawyers for indigent defendants, staff, and other costs. Without this funding, the legal system on the border would be unable to handle the current crisis caused by the large influx of migrants.

Health services. HB 9 also would recognize the increased need for health resources resulting from the influx of migrants by appropriating funds for ambulance services for new legal processing centers and jail facilities.

CRITICS SAY:

Texas should not continue to increase what is already a high level of spending on border security, especially when other areas of state responsibility need funding, including education, the energy grid, community care aides, healthcare, addressing the pandemic, and more.

The bulk of spending in HB 9 would take the wrong approach by prioritizing physical structures and barriers over giving funds to local law

enforcement entities and others who have pressing needs for resources and assistance on the border. Technology, rather than physical barriers, also should be explored.

HB 9 would pour a large amount of state funds into what so far largely has been an effort to arrest and prosecute trespassers, and it is unclear that these efforts would deter border crossing from those desperate to escape violence or other grave situations. Instead of using state funds to channel economic migrants or those who may be trying to reach immigration authorities into the state criminal justice system, funds should be used on proven strategies to combat serious felony and drug crimes.

Supplying an additional $1.8 billion on top of the $1.1 billion in border security spending already appropriated for fiscal 2022-23 would be unsustainable or come at the later price of raising taxes or cutting spending in important areas of the budget, such as health care or education.

NOTES:

According to the Legislative Budget Board, HB 9 would have a negative impact of $1.8 billion to general revenue through fiscal 2023. It also would authorize an increase of 115 state employees.

SUBJECT: Banning transportation, storage, disposal of high-level radioactive waste

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 6 ayes — Landgraf, Dominguez, Dean, Kacal, Kuempel, Morrison

1 nay — Goodwin

2 absent — Morales Shaw, Reynolds

WITNESSES: For — (*Registered, but did not testify*: Thomas Parkinson)

Against — Susybelle Gosslee, League of Women Voters of Texas; Tom "Smitty" Smith, Public Citizens Texas Office; Karen Hadden, SEED Coalition.org; Carolyn Croom; Beki Halpin; Richard Halpin; (*Registered, but did not testify*: Dale Bulla; Pat Bulla; Stephanie Hoffman; John Tate)

On — Cyrus Reed, Lone Star Chapter Sierra Club; Ashley Forbes, Texas Commission on Environmental Quality-Radioactive Materials Division; (*Registered, but did not testify*: Erika Crespo, Texas Commission on Environmental Quality-Water Quality Division)

BACKGROUND: Health and Safety Code sec. 401.202 allows the Texas Commission on Environmental Quality to grant one license to a facility for the disposal of "compact waste," or low-level radioactive waste.

Under 42 U.S.C. sec. 10101, the term "high-level radioactive waste" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations and other highly radioactive material that the Nuclear Regulatory Commission determines requires permanent isolation. "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

DIGEST:

HB 7 would prohibit certain transportation, disposal, or storage of high-level radioactive waste in the state and restrict the permitting of high-level radioactive waste storage facilities. "High-level radioactive waste" would have the meaning assigned by federal law (42 U.S.C. sec. 10101) and would include spent nuclear fuel.

The bill would prohibit a person from transporting or arranging for the transportation of high-level radioactive waste on the highways or railways in the state.

A person, including the compact waste disposal facility license holder, could not dispose of or store high-level radioactive waste in the state, with the exception of storage at the site of currently or formerly operating nuclear power reactors and research and test reactors located on university campuses.

The Texas Commission on Environmental Quality could not issue a general construction permit, approve a Stormwater Pollution Prevention Plan, or issue a permit under the Texas Pollutant Discharge Elimination System Program for the construction or operation of a facility that was licensed for the storage of high-level radioactive waste by the U.S. Nuclear Regulatory Commission. The bill would except a permit for a facility located at the site of currently or formerly operating nuclear power reactors and research and test reactors located on university campuses. These provisions would apply only to an application or permit amendment submitted on or after the bill's effective date.

If any provisions of this bill or its application were held invalid, the invalidity would not affect other provisions or applications of the bill that could be given effect without the invalid provisions or application. To this end, the provisions of the bill would be severable.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect 91 days after the last day of the legislative session.

SUPPORTERS SAY:

HB 7 would enact the will of Texas residents by banning the transportation, storage, and disposal of dangerous high-level radioactive

waste in the state. There is a single low-level radioactive waste disposal facility in the state located in Andrews County, which benefits from jobs and other economic activity generated by the facility. However, the federal Nuclear Regulatory Commission (NRC) currently is evaluating an application that would authorize the storage of spent nuclear fuel, or high-level radioactive waste, in the county. This could jeopardize public health and safety and the environment of the area. Any release of high-level radioactive material would contaminate the low-level facility and lead to lost revenues for both the county and the state.

HB 7 would support the residents of Andrews County, where the commissioners court unanimously passed a resolution expressing opposition to the storage of high-level radioactive waste, by prohibiting in-state transportation, storage, and disposal of such waste. This would protect not only Andrews County, but also other areas of the state through which high-level radioactive waste could be transported, putting those areas at risk from potential leaks.

The bill would prohibit the Texas Commission on Environmental Quality (TCEQ) from issuing permits for the construction or operation of a high-level radioactive waste facility, so even if such a facility were to be approved by NRC, it would be prevented from operating and subjected to TCEQ's existing enforcement measures. The bill also would exempt existing nuclear reactors to ensure that generators providing power for the state and university reactors continued to store waste on site.

Those claiming a high-level radioactive waste facility would be safe and secure have not considered all the possible impacts. NRC has conducted an environmental impact study regarding the proposed facility, but no study has been done to show the potential impact of storing high-level radioactive waste on oil and gas operations in the Permian Basin, one of the largest producing oilfields in the world. It is in the best interest of the state to protect the Permian Basin, which employs thousands of Texans and generates billions of dollars for the state, including transportation and education funds. Such a facility could make the area a target for terrorism and threaten this significant energy resource.

While some have made calls to also ban the transportation, storage, and disposal of greater-than-class C (GTCC) waste, that type is considered to be low-level radioactive waste and often is generated by oil and gas production activities. GTCC waste already has been stored in the low-level waste facility in Andrews County for years and helps drive economic activity. Stakeholders may continue to discuss which levels of waste are appropriate to be stored in the state, but it is imperative that HB 7 be enacted quickly to prevent NRC from licensing a high-level radioactive waste facility in Andrews County. Additionally, the bill must be germane to the governor's call for the special session, which only references high-level radioactive waste.

CRITICS SAY:

The Legislature should not limit the storage of radioactive waste in Andrews County. The Nuclear Regulatory Commission (NRC) will ensure that any proposed high-level radioactive waste interim storage facility would be approved based on its merits. The nation would benefit from a centrally located interim storage facility in Texas, and such a facility also would be advantageous to Texans by bringing jobs and industry to the community. There is no reason to think a federally approved facility would not store spent nuclear fuel rods in a safe manner, as there have not been issues with storing this kind of waste in existing facilities. Significant time and money has been spent to ensure that a Texas facility would meet all safety standards for the public, workers, and the environment. NRC released an environmental impact report concluding that the proposed interim storage facility would not have a long-term impact to the land resources in the area.

OTHER CRITICS SAY:

HB 7 would not go far enough to ban high-level radioactive waste in the state. It should prohibit the transportation, disposal, and storage of greater-than-class C (GTCC) waste. While it may not meet the legal definition of high-level radioactive waste, GTCC waste is as dangerous and its storage in the state could increase risks to Texas residents and the environment.

Certain provisions of the bill also should be clarified to prevent loopholes. It should be clear that the ban on high-level waste applied to all private and public entities and prevent facilities from submitting a partial application to avoid the ban. The bill also should have stronger enforcement measures, such as specific fines and penalties."

SUBJECT: Prohibiting viewpoint-based censorship by some social media platforms

COMMITTEE: Constitutional Rights and Remedies, Select — committee substitute recommended

VOTE: 9 ayes — Ashby, Clardy, Geren, Jetton, Klick, Landgraf, Lozano, Shaheen, White

5 nays — S. Thompson, Bucy, A. Johnson, Longoria, Moody

1 absent — Neave

WITNESSES: For — W. Scott McCollough, Giganews and Golden Frog; Paul Hodson, Grassroots Gold; Sheena Rodriguez, Latinos for America First, Texans Against Illegal Immigration; Donald Garner, Texas Faith & Freedom Coalition; and 10 individuals; (*Registered, but did not testify*: Charles Simmons, Inda Simmons, Craig Weisman, Wesley Whisenhunt, Grassroots Gold; Alan Vera, Harris County Republican Party Ballot Security Committee; Jonathan Covey, Texas Values Action; Robert L. Green, Travis Co. Republican Party Election Integrity Committee; Kathleen Ocker, We the People Liberty in Action; Marcia Strickler, Wilco We The People; and 18 individuals)

Against — Tom Giovanetti, Institute for Policy Innovation; James Hines, Internet Association; Steve DelBianco, NetChoice; Servando Esparza, TechNet; Paula Kothmann; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Dionna Hardin, Black Voters Matter; Adrian Shelley, Public Citizen; and 16 individuals)

DIGEST: CSHB 20 would establish complaint procedures and disclosure requirements for social media platforms regarding the management and removal of content. The bill would prohibit censorship by social media platforms based on a user's viewpoint. The bill's provisions on social media platforms would apply only to a platform or service that functionally had more than 50 million active monthly users in the United States.

Definitions. "Social media platform" would mean a website or application that was open to the public, allowed a user to create an account, and enabled users to communicate with other users for the primary purpose of posting information, comments, messages, or images. "User" would mean a person who posted, uploaded, transmitted, shared, or otherwise published or received expression through a social media platform, including a person who had an account disabled or locked by the social media platform.

Discourse on social media platforms. CSHB 20 would prohibit a social media platform from censoring a user, a user's expression, or a user's ability to receive the expression of another person based on:

- the viewpoint of the user or another person;
- the viewpoint represented in the user's expression or another person's expression; or
- a user's geographic location in Texas or any part of the state.

The prohibition would apply regardless of whether the viewpoint was expressed on the social media platform or another medium. It would apply only to a user who resided in, did business in, or shared or received expression in Texas, and only to expression that was shared or received in Texas. A waiver or purported waiver of the protections provided by the bill would be void as against public policy, and could not be enforced by a court.

User Remedies. A user could bring an action against a social media platform that violated the bill with respect to the user. A user that proved a violation would be entitled to recover declaratory relief, including costs and reasonable attorney's fees, and injunctive relief. A court would have to hold a platform that failed to promptly comply with a court order in contempt and would have to use all lawful measures to secure immediate compliance with the order, including daily penalties sufficient to secure immediate compliance. A user could bring an action under the bill regardless of whether another court had enjoined the attorney general from enforcing the bill's provisions or declared any provisions unconstitutional unless that court decision was binding on the court where the action was brought.

CSHB 20 would not subject a social media platform to damages or other legal remedies to the extent the platform was protected from those remedies under federal law. A social media platform would not be prohibited from censoring expression that:

- the platform was specifically authorized to censor by federal law;
- was the subject of a referral or request from an organization whose purpose is to prevent the sexual exploitation of children and protect survivors of childhood sexual abuse from ongoing harassment;
- directly incited criminal activity or consisted of specific threats of violence targeted against a person or group because of their race, color, disability, religion, national origin or ancestry, age, sex, or status as a peace officer or judge; or
- was unlawful expression.

The bill could not be construed to prohibit or restrict a social media platform from authorizing or facilitating a user's ability to censor specific expression at the request of that user. The bill also could not be construed to limit or expand intellectual property law.

Public disclosure. A social media platform would have to publicly disclose accurate information on its content management, data management, and business practices, including specific information about how the platform:

- curates and targets content to users;
- places and promotes content, services, and products, including its own;
- moderates content;
- uses search, ranking, or other algorithms or procedures that determine results on the platform; and
- provides users' performance data on the use of the platform and its products and services.

The disclosure would have to be sufficient to enable users to make an informed choice regarding the purchase of or use of access to or services

from the platform. The disclosure would have to be published on a website easily accessible to the public.

Acceptable use policy. A social media platform would have to publish an acceptable use policy in a location easily accessible to a user. The policy would have to:

- reasonably inform users about the types of content allowed on the platform;
- explain the steps the platform will take to ensure content complies with the policy;
- explain the means by which users can notify the platform of content that potentially violates the acceptable use policy, illegal content, or illegal activity, including an email address or complaint intake mechanism, a complaint system described by the bill, and;
- include publication of a biannual transparency report.

Transparency report. The biannual transparency report would include the total number of instances in which the platform was alerted to illegal content, illegal activity, or potentially policy-violating content and the number of instances in which the platform removed content, suspended or removed an account, or took other action as specified in the bill. The transparency report would have to categorize information by the rule violated and whether the source of the alert included a government, a user, an internal automated detection tool, coordination with other social media platforms, or persons employed by or contracting with the platform. The platform would have to publish the quarterly transparency report with an open license, in a machine-readable and open format, and in a location that was easily accessible to users.

Complaint procedures. CSHB 20 would require a social media platform to provide an easily accessible complaint system to enable a user to submit a complaint in good faith and keep track of the status of the complaint, including a complaint regarding illegal content or activity or a decision made by the social media platform to remove content posted by the user. A platform would have to make a good-faith effort to evaluate the legality of the content or activity within 48 hours of receiving notice of illegal content or illegal activity, excluding weekend hours and subject

to reasonable exceptions based on concerns about the legitimacy of the notice.

Content removal. If a social media platform removed content based on a violation of its acceptable use policy, the platform would have to:

- notify the user who provided the content of the removal and explain why it was removed;
- allow the user to appeal the decision; and
- provide written notice to the user who provided the content of the determination regarding a requested appeal, and in the case of a reversal of the decision to remove the content, the reason for the reversal.

A platform would not have to provide notice to a user who could not be contacted after reasonable steps to make contact or if the platform knew that the potentially policy violating content related to an ongoing law enforcement investigation.

Regarding an appeal by a user over removed content that the user believed was not potentially policy-violating content, the platform would have to, not later than the 14th day after the date the platform received the complaint:

- review the content;
- determine whether it adhered to the platform's acceptable use policy and take appropriate steps based on that determination; and
- notify the user regarding the determination.

Email. CSHB 20 would prohibit an electronic mail service provider from intentionally impeding the transmission of another person's e-mail message based on the content of the message unless the provider was authorized to block the transmission under certain provisions of the Business and Commerce Code or other state or federal law, or had a good-faith, reasonable belief that the message contained a computer virus or material that was obscene, depicted sexual conduct, or violated other law.

A person injured by a violation of this prohibition could recover an amount equal to the lesser of $10 for each message unlawfully impeded or $25,000 for each day the message was unlawfully impeded.

Enforcement. The attorney general could bring an action to enjoin a violation or potential violation of the bill's provisions and could recover costs, reasonable attorney's fees, and reasonable investigative costs. Any person could notify the attorney general of a violation or potential violation of the bill's provisions regarding viewpoint censorship.

Severability. The bill would provide for the severability of every provision, section, subsection, sentence, or clause, and of every application of its provisions to any person, group of persons, or circumstances. The Legislature would further declare that it would have enacted the act, each provision, section, subsection, sentence, or clause of the bill, and all constitutional applications of the bill, regardless of the fact that any provision, section, subsection, sentence, or clause of the bill or application of the bill were to be declared unconstitutional. The bill would provide that if any provision was found by any court to be unconstitutionally vague, the applications of that provision that did not present constitutional vagueness problems would be severed and remain in force. The bill would establish that no court could decline to enforce the bill's severability requirements on the ground that severance would rewrite the statute or involve the court in legislative activity.

The bill would take effect on the 91st day after the last day of the current legislative session, and would apply only to a cause of action that accrued on or after that date.

SUPPORTERS SAY:

CSHB 20 would recognize that prominent social media sites have come to dominate public discourse in Texas and should be regulated to prevent them from unfairly discriminating against certain viewpoints and ensure they are accountable for their actions when they remove content. The bill also would bring transparency to the companies' content moderation policies and actions.

Laws that Congress crafted when social media companies were in their infancy have shielded them from liability for their content, but as the

companies' influence has grown, those laws have become outdated, making it important for Texas to act. CSHB 20 would hold social media platforms to basic standards of accountability by requiring them to publicly disclose how they target content to users, promote products and services, and use algorithms to determine results on their platform. They would have to publish an acceptable use policy concerning their content moderation policies, publish biannual reports about the content they remove, and create an appeal process for content that had been taken down.

CSHB 20 would curtail big tech companies' ability to silence viewpoints on their platforms by prohibiting viewpoint censorship and allowing users who were wrongly censored to sue the company and, if successful, recover costs and attorney fees. The bill also would require social media companies to implement an easily accessible complaint procedure for users to submit complaints about illegal content or the platform's allegedly wrongful removal of content. CSHB 20 also would prohibit the blocking of email based on the content of a message, while ensuring that providers could block messages containing viruses or unlawful material.

While the bill would prohibit censorship based on a user's viewpoint, it would not restrict social media platforms' ability to remove certain kinds of objectionable content, including obscene or offensively violent material otherwise protected by the First Amendment but subject to control under the Communications Decency Act. The bill also would not penalize social media companies for blocking content that incited criminal activity or threatened violence, and would allow for removal of content in order to prevent sexual exploitation of children.

While some say that as private companies, large social media companies have the right to control the content on their platforms, such companies have essentially become the gatekeepers of free speech and have acted to limit mostly, though not exclusively, conservative views. The bill would allow the public and the attorney general to serve as watchdogs over unwarranted content removal and viewpoint censorship. Regulating the content moderation policies of big tech companies would not violate their First Amendment rights since due to their dominant market shares they function as common carriers of public speech and, as such, can be

prohibited by the government from discriminating against their customers. The bill would not compel speech on the part of social media companies, only prevent their censorship of others' speech. The bill's limitation to platforms with 50 million domestic monthly users would ensure that it applied only to companies that effectively functioned as common carriers and served as the new public square.

The bill is unlikely to lead to a rash of lawsuits being filed in Texas courts by social media users against the companies because the bill contains no cause of action for damages. CSHB 20 also would not share the provisions that have caused other bills related to social media censorship to be enjoined by federal court in other states. Large social media companies have already invested substantially in Texas, so it is unlikely that the bill would have any significant negative impact on the state's economy and business environment.

CRITICS SAY:

CSHB 20 would run counter to the First Amendment by prohibiting a private business from controlling its own content based on dubious claims that social media platforms are censoring certain viewpoints. Social media companies' market power and hosting of private speech do not transform them into a public forum or common carrier subject to First Amendment restraints, and no law or court ruling has found social media companies to be common carriers. By forcing social media platforms to host any and all viewpoints, the bill would compel political speech. The bill's 50 million user threshold would be arbitrary and discriminatory and could unfairly target certain companies on the basis of perceived liberal bias. CSHB 20 could face a costly legal challenge and be found unconstitutional. Similar bills outside of Texas have already been enjoined by a federal court.

CSHB 20's distinction between viewpoint and content is unclear. Content moderation is at the core of the business models for social media companies, who seek to create a welcoming environment for users and advertisers. Companies generally take their responsibility seriously and try to remove harmful content in an unbiased manner while keeping their services open to a broad range of views and ideas. The bill could create an incentive for companies to not remove content that may be objectionable but not unlawful, such as bullying, misinformation, or even hate speech, in order to avoid being accused of violating the bill. Content moderation

decisions could lead to numerous costly lawsuits for a social media company. Requiring social media platforms to publicize their content moderation policies also could make it easier for bad actors to circumvent those policies.

By subjecting social media companies to burdensome regulation and exposing them to expensive litigation, HB 20 could inhibit the state's efforts to persuade technology companies to locate Texas through policies that are conducive to business and job creation and harm Texas' reputation as a business-friendly state.

SUBJECT: Modifying bail setting process and eligibility

COMMITTEE: Constitutional Rights and Remedies, Select — committee substitute recommended

VOTE: 9 ayes — Ashby, Clardy, Geren, Jetton, Klick, Landgraf, Lozano, Shaheen, White

5 nays — S. Thompson, Bucy, A. Johnson, Longoria, Moody

1 absent — Neave

SENATE VOTE: On final passage, August 9 — 27-2 (Blanco, Eckhardt)

WITNESSES: For — Andy Kahan, Crime Stoppers of Houston; Michael Hartman, Texas Probation Association; Nikki Pressley, Texas Public Policy Foundation, Right on Crime; Ken W. Good, The Professional Bondsmen of Texas; Marvin Fletcher Jr; (*Registered, but did not testify*: Justin Keener, for Doug Deason, Paul Gastineau; Chris Kahan)

Against — Nick Hudson, American Civil Liberties Union of Texas; Jeffrey Stein, Civil Rights Corps; Adam Haynes, Conference of Urban Counties; Karen Munoz, Mano Amiga SM and LatinoJustice PRLDEF; Carson White, Texas Appleseed; David Gonzalez, Texas Criminal Defense Lawyers Association; Justin Martinez, Texas Criminal Justice Coalition; Lauren Rosales, The Bail Project; Katya Ehresman; Ash Hall; Wade Ivey; Judah Rice; Stephen Vigorito; (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Jennifer Toon, Coalition of Texans with Disabilities; Paul Sugg, Harris County Commissioners Court; Kathy Mitchell, Just Liberty; Matthew Lovitt, National Alliance on Mental Illness Texas; Joshua Massingill, Prison Fellowship Ministries; Adrian Shelley, Public Citizen; Maggie Luna, Statewide Leadership Council; Shea Place and Allen Place, Texas Criminal Defense Lawyers Association; Julie Wheeler, Travis County Commissioners Court; Patrick Humphrey, Vivent Health; Mark Faulkner; Barbara Fletcher; Idona Griffith; Brad Pritchett; Grace Thomas)

On — Jim Allison, County Judges and Commissioners Association of Texas; Russell Schaffner, Tarrant County; David Slayton, Texas Judicial Council

BACKGROUND:

Texas Constitution Art. 1, sec. 11 and Code of Criminal Procedure art. 1.07 state that all prisoners shall be bailable unless accused of a capital offense when proof is evident. Texas Constitution Art. 1, sec. 11 establishes circumstances under which bail may be denied. Under these provisions, bail may be denied in cases with repeat offenders accused of certain felonies and in cases of individuals accused of certain offenses involving family violence and protective orders.

Code of Criminal Procedure art. 17.15 establishes rules for setting bail amounts, specifying that the amount of bail is to be governed by the Constitution and by the following rules:

- it must be sufficiently high to give reasonable assurance that the undertaking will be complied with;
- the power to require bail is not to be so used as to make it an instrument of oppression;
- the nature of the offense and the circumstances under which it was committed are to be considered;
- the ability to make bail is to be regarded, and proof may be taken upon this point; and
- the future safety of a victim of the alleged offense and the community shall be considered.

DIGEST:

SB 6 would require the development and use of a public safety report to be used when setting bail, require magistrates making bail decisions to receive training, establish requirements related to who can set bail in certain cases and when certain actions need to be taken, and create a procedures for use in some cases involving bail schedules. The bill also would prohibit the release on personal bond for some offenses, modify the statutory rules governing the bail process, and require certain officials taking bail to obtain a defendant's criminal history. SB 6 also would establish reporting requirements relating to bail and require notice of bond conditions to be sent to local law enforcement authorities.

The bill would be called the Damon Allen Act.

Development, use of public safety report system. SB 6 would require the development and use of a public safety report system to be used when making decisions about bail for criminal defendants in jail pretrial.

Development of public safety report system. The Office of Court Administration (OCA) would be required to develop and maintain a public safety report system for use by magistrates when making decisions about bail.

The system would have to:

- state the Code of Criminal Procedure's requirements and rules for setting bail;
- provide certain information about the defendant, the case, and the offense;
- provide information on the eligibility of the defendant for a personal bond;
- provide information on any required or discretionary bond conditions;
- summarize the criminal history of the defendant, including information about previous convictions, pending charges, previous sentences with a term of confinement, previous convictions or pending charges for offenses involving violence as defined by the bill, offenses involving violence against a peace officer, and previous failures of the defendant to appear in court after a release on bail; and
- be designed to collect and maintain the information provided on a bail form that would be required by the bill.

The public safety report system could not include any information not listed above and could not include a score, rating, or assessment of a defendant's risk or make a recommendation on the appropriate bail for the defendant. The report could not be the only item relied on by a judge or magistrate to make a bail decision.

OCA would have to create the system by April 1, 2022, and provide access to the system to county and city officials at no cost.

OCA would have to use the information to collect data and report to state leaders on the number of defendants for whom bail was set, including the number in each category of offense, the number of personal bonds, and the number of monetary bonds.

Use of public safety report. Magistrates would be required to consider a public safety report before setting bail for defendants charged with a class B misdemeanor or higher offense.

Magistrates considering the release on bail of a defendant charged with an offense punishable as a class B misdemeanor or any higher offense would have to order that the personal bond office or other trained person use the public safety report system to prepare a report on the defendant. Magistrates would have to order that report be given to them as soon as practicable but not later than 48 hours after a defendant's arrest.

Magistrates could order and consider public safety reports for defendants charged with misdemeanors punishable by a fine only.

Magistrates would have to submit to OCA a bail form that included information about each defendant and the bail that was set.

Training, qualifications to make bail decisions. Only magistrates who met qualifications established in the bill could release on bail defendants charged with felonies or misdemeanors that carried potential terms of confinement. Such magistrates would have to be in compliance with training requirements in the bill.

OCA would be required to develop or approve training courses that included magistrates' duties for setting bail in criminal cases. The courses would have to include an eight-hour initial training course that included training on the DPS criminal history system and a two-hour continuing education course. OCA would have to provide a method to certify that

magistrates had completed the required training courses and had demonstrated competency of the course content.

OCA would have to make the training courses and certification available by April 1, 2022. The bill would establish deadlines for magistrates to complete required courses.

The Department of Public Safety (DPS) would be required to develop training courses on the use of the Texas Law Enforcement Telecommunications System (TLETS), which is a portal to criminal history and other databases, for each magistrate, judge, sheriff, peace officer, or jailer required to obtain criminal history record information under the Code of Criminal Procedure's bail provisions.

Bail for defendant charged with offense committed while on bail. SB 6 would establish requirements for courts if a defendant was charged with committing offenses while released on bail for another offense.

Under these circumstances, if a felony offense were committed in the same county as a previous felony offense for which the defendant was on bail, only the court in which the previous offense was pending could release the defendant on bail.

If a defendant is charged with a new offense while on bail for a previous offense and the new offense was committed in a different county than the previous offense, electronic notice of the new charge must be promptly given to the court in which the previous offense was pending so the court could reevaluate the bail decision, determine whether any bail conditions were violated, or take any other applicable action.

Action on bail decision. The bill would require magistrates to take certain actions regarding bail within 48 hours of an individual's arrest.

Within this time frame, a magistrate would be required to order, after individualized consideration of all circumstances and of other statutory factors, that a defendant be:

- granted personal bond with or without conditions;

- granted surety or cash bond with or without conditions; or
- denied bail in accordance with the Texas Constitution and other law.

In making bail decisions, magistrates would have to impose the least restrictive conditions, if any, and the personal bond or monetary bond necessary to reasonably ensure the defendant's appearance in court and the safety of the community, law enforcement, and the victim of the alleged offense. Unless specifically provided by another law, there would be a rebuttable presumption that bail, conditions of release, or both were sufficient to reasonably ensure the defendant's appearance in court and the safety of the community, law enforcement, and the alleged victim. These provisions could not be construed as requiring the court to hold an evidentiary hearing that was not required by other law.

The bill would establish requirements for using bail schedules and standing orders that set bail in certain situations. Judges would be prohibited from adopting a bail schedule or entering a standing order related to bail that was inconsistent with the bill or authorized a magistrate to make bail decisions without considering statutory factors listed in Code of Criminal Procedure art. 17.15(a).

Defendants who were denied bail or were unable to give bail in the amount required by a bail schedule or standing order would have to be provided the warnings required by Code of Criminal Procedure art. 15.17 when an arrested individual is taken before a magistrate.

Defendants charged with class B misdemeanor offenses or higher who were unable to give bail established by a bail schedule or standing order could file with the magistrate a sworn affidavit following a form laid out in the bill. Defendants filing affidavits would have to complete a form to allow a magistrate to assess their financial situation. The form would have to be the form used to request a court-appointed attorney or a form developed by OCA and would have to collect, to the best of the defendant's knowledge, certain information.

Magistrates would have to inform defendants of their right to file an affidavit and ensure that the defendant received reasonable assistance in completing the affidavit and the form collecting financial information.

Defendants could file an affidavit any time before or during the bail-setting proceeding. A defendant who filed an affidavit would be entitled to a prompt hearing before the magistrate on the bail amount. The defendant would have to be able to present evidence and respond to evidence presented by a prosecutor.

Magistrates would have to consider the facts presented and the statutory rules for establishing bail and set the defendant's bail. If bail was not set below the amount required by the bail schedule or standing order, magistrates would have to make written findings supporting their decision.

Judges of courts trying criminal cases and other magistrates would have to report to OCA each defendant for whom a required hearing was not held within 48 hours of the defendant's arrest and the reason for the delay.

A statement or evidence derived from a statement could be used only to determine whether the defendant was indigent, to impeach the direct testimony of the defendant, or to prosecute the defendant for perjury.

Magistrates would be authorized to make bail decisions about defendants charged only with a fine-only misdemeanor without considering criminal history record information.

Prohibited release on personal bond. SB 6 would prohibit the release of certain defendants on personal bond, under which courts establish a bail amount but defendants do not give the court money or other security and agree to return to court and to other conditions. Release on personal bond would be prohibited for those charged with:

- offenses involving violence, as defined by the bill; or
- a felony or certain other offenses committed while released on bail or community supervision.

The other offenses that would preclude a personal bond for someone on bail or community supervision would include certain offenses of assault involving bodily injury, deadly conduct, terroristic threat, or disorderly conduct involving a firearm.

The bill lists 20 offenses that would be considered violent offenses.

These provisions on personal bonds would take effect immediately if SB 6 received the necessary vote or the 91st day after the last day of the session if it did not receive the vote for immediate effect.

Rules for setting bail. The bill would revise provisions in Code of Criminal Procedure art. 17.15 that establish the rules for setting the amount of bail. It would expand the rules to apply to the conditions of bail.

The bill would state that current consideration required to be given to the nature of the offense and its circumstances should include whether the offense involved violence or violence against a peace officer. In addition to a current requirement that the future safety of a victim of an alleged offense and the community be considered, the bill would require the future safety of law enforcement to be considered.

The bill would add two rules to those that govern the setting of the amount of bail and conditions of release. The bill would require consideration of the criminal history record information for the defendant, including information obtained through the DPS system and through the public safety report system developed under the bill. The consideration would have to include any acts of family violence, other pending criminal charges, and any instances in which the defendant failed to appear in court following release on bail. Citizenship status of the defendant also would have to be considered.

When determining whether clear and convincing evidence existed to deny a person bail as provided by the Constitution, magistrates would have to consider all information relevant to the statutory factors listed in the rules for setting bail.

Before sheriffs, peace officers, or jailers could take bail as currently allowed under Code of Criminal Procedure arts. 17.20 and 17.22, they would have to obtain the defendant's criminal history record information through the DPS system and through the public safety report system. If the defendant was charged with or had previously been convicted of an offense involving violence, the sheriff, officer, or jailer could not set the amount of the defendant's bail but could take bail in the amount set by the court.

Notice of bond conditions to local officials. The bill would require courts to notify certain law enforcement officials after a magistrate imposed a condition of release on bond or modified or removed a previous condition. By the next business day after the date a magistrate imposed, modified, or removed a condition of release on bond, the court clerk would have to send a copy of the order to the prosecutor and the sheriff of the county where the defendant resided.

If the order prohibited a defendant from going to or near a child care facility or school, the clerk also would have to send a copy of the order to the child care facility or school.

Magistrates would have to give defendants written notice of the conditions of release on bond and the penalties for violating a condition of release. A police chief or sheriff receiving a copy of an order would be required, within 10 days of receiving the order, to enter or modify information about the condition of release into the DPS database.

Reporting bail and pretrial release information. Court clerks would have to include certain information about bail in their currently required statistical monthly report to OCA. The report would have to include:

- the number of defendants for whom bail was set, including the number for each category of offense, the number of personal bonds, and the number of surety or cash bonds;
- the number of defendants released on bail who subsequently failed to appear;
- the number of defendants released on bail who subsequently violated a condition of release; and

- the number of defendants who committed an offense while released on bail or community supervision.

OCA would have to post the information on its website, and by December 1 each year, OCA would have to submit a report with the bail data to the governor, the lieutenant governor, the House speaker, and certain legislative committees.

OCA would be required to develop a form to be completed by a magistrate, judge, sheriff, peace officer, or jailer who set a defendant's bail for a class B misdemeanor or higher offense. The form would have to include specific information about the case and the defendant. It also would have to be signed by the person setting bail and require the person to identify the bail type, the amount, and any conditions of bail and certify other information, including that the person considered the information in the public safety report.

The form would have to be submitted to OCA, and OCA would have to publish each form in a publicly accessible database on the office's website.

Other provisions. SB 6 contains other provisions relating to bail bonds, including expanding the information required to be in the DPS computerized criminal history system to include for offenders released on bail, whether a warrant was issued for any subsequent failure of the offender to appear in court.

OCA would be required to develop statewide procedures and forms for courts to facilitate the refund of any cash funds paid toward a monetary bond and the application of those cash funds to a defendant's outstanding court costs, fines, and fees.

The bill would prohibit court clerks in certain situations from deducting a current administrative fee for handling funds relating to certain bonds. Clerks could not deduct a fee from funds generated by the collection of a cash bond or cash bail bond if the defendant was found not guilty after a trial or appeal or if the complaint, information, or indictment was dismissed without a guilty or no contest plea. The fee would have to be refunded under certain circumstances described in the bill.

The bill would generally take effect January 1, 2022, and would apply to those arrested on or after that date. Certain provisions, including ones relating to the public safety report system and magistrate training, would take effect 91 days after the last day of the legislative session.

Provisions relating to prohibiting bail for certain offenses would take place only if voters approved the constitutional amendment proposed by the 87th Legislature, 2nd Called Session, requiring a judge or magistrate to impose the least restrictive conditions of bail necessary and authorizing the denial of bail under some circumstances to individuals accused of a violent or sexual offense or of continuous trafficking of persons.

SUPPORTERS SAY:

SB 6 would reform the bail-setting process in Texas to better protect the public and ensure a more fair and just system for those accused of crimes by requiring those making such decisions to receive training, placing appropriate parameters on bail and certain types of bonds, giving more information to those making bail decisions, improving transparency about bail decisions, and ensuring that safety and appearance in court, not wealth, drove bail decisions. A statewide law is needed to ensure these issues are addressed uniformly.

The current system can result in bail amounts that do not reflect the threat that those accused of crimes pose to the public or the likelihood that they will appear in court. Decisions under the current system have allowed high-risk and dangerous defendants with financial means out on the streets pretrial and allowed violent and habitual offenders to be released pretrial multiple times on either personal or cash bonds, resulting in serious and violent crimes. These decisions have harmed public safety, failed victims, communities, and law enforcement, and resulted in tragedies such as the 2017 killing of Department of Public Safety trooper Damon Allen, for whom the bill would be named. Trooper Allen was shot during a traffic stop by someone who had been released on bail despite being a repeat offender with a violent past.

SB 6 would be a balanced approach to revising bail laws. Its provisions would work together to keep in jail pretrial dangerous defendants and those who may not appear in court and to allow others to quickly be

moved out of jails and into the community while they await trial. These changes would better use criminal justice resources to protect the public and focus on dangerous defendants.

Development, use of public safety report system. SB 6 would improve bail decisions by giving magistrates more information about those accused of crimes. Currently, decisions can be made by magistrates who do not know a defendant's full criminal history or other vital information, such as their history of appearing in court. SB 6 would address this issue by establishing a public safety report system that would quickly provide magistrates with a readable, condensed form containing criminal history and other information that should be weighed when making bail decisions.

The public safety report would not dictate an outcome or reduce judicial discretion because magistrates would make individual decisions in each case. Other information would be considered, and the report could not be the only item relied on by a magistrate. The report would only provide information and would not be a risk assessment tool because it could not include a score or rating.

The public safety report would be free, quick and easy to use, and would not slow down bail decisions. The report would not negatively impact defendants who received a citation and summons to court. The report would be designed to be generated nearly instantaneously at the point of magistration, so there would be no effect when issuing a citation. Local jurisdictions could adopt procedures to ensure those receiving a citation and summons did not experience any delays when they appeared at a court.

Training, qualifications to make bail decisions. The bill would require training and demonstrated competency for those making bail decisions, which would ensure that qualified individuals were acting in this complex and important area. Since these decisions affect public safety and the liberty of those accused of crimes, it is especially important that everyone making them is trained and understands their duties.

Bail for defendant charged with offense committed while on bail. SB 6 would further more informed and accountable decisions about bail by

limiting who could set bail for individuals who are charged with a new felony offenses while released on bail for another felony. By requiring those committing a serious offense while on bail to go before the same court where bail was set in the previous case, the bill would ensure that a defendant's history was taken into account and that a court would be accountable for decisions made about those accused of multiple crimes. The bill requires that the defendant go before the same court, rather than the same judge, since scheduling restrictions may make it difficult to appear before the same judge, or some courts may use trained magistrates accountable to the court for such cases.

Action on bail decision. SB 6 would address concerns that the current system unfairly keeps some non-dangerous defendants with limited financial means in jail pretrial. The directives in the bill to impose the least restrictive conditions and bail, either personal or money, to ensure court appearance and protect public safety would ensure defendants received fair conditions on any bond and that personal bonds and monetary bail were used appropriately.

The bill would not prohibit bail schedules, which are used to set bail based on specified factors, such as the type of offense, but rather track recent court ruling on their use and outline a process to use them. SB 6 would respect defendants' rights by establishing a fair process, including a potential hearing, when an individual was unable to give bail set by a schedule or standing order. The defendant, by being in the best position to know if bail was affordable, should be the one to raise the issue of bail being unaffordable and to provide financial information to the court. Filling out the form would not be burdensome, as the bill limits the forms to the one already used at magistration to request an attorney or one developed by OCA, and specifies that it is to be done to the best of the defendant's knowledge. These provisions would not trigger a requirement for the appointment of an attorney to indigent defendants. The bill specifically says that certain provisions should not be construed as requiring an evidentiary hearing, and the requirements would be applied only in the limited cases where there were bail schedules or standing orders.

By establishing the process to have bail from a bail schedule reviewed and setting a deadline for the hearing to consider reducing bail, SB 6 could result in some individuals being released more quickly than under current law.

SB 6 would not impose restrictions or requirements for charitable bail organizations because the state should move cautiously in this area, and more study on this issue is warranted before making changes to statutes.

Prohibited release on personal bond. SB 6 would better protect the public by limiting the use of personal bonds for those accused of certain violent offenses, as well as those charged with certain serious offenses while on bail or probation for certain crimes. Current law has resulted in dangerous defendants being released on personal bonds, in some cases multiple times, then committing violent offenses with tragic consequences.

The bill would halt the misuse of personal bonds that result in some individuals being released without the accountability of cash bail. For the serious offenses listed in the bill, it is appropriate to require money bail and more than the promise to return to court given with a personal bond. In cases where personal bonds were prohibited, magistrates would use their judicial discretion to evaluate each case and set a cash bond as they deemed appropriate, including setting low, easily attainable bonds if someone did not represent a risk to public safety or was not a risk for failure to appear in court.

Rules for setting bail. Under the bill, decisions about bail would be more reasonable than under current law, and public safety would be improved because magistrates and judges would have information from the public safety report as well as revised rules that required the consideration of criminal history, family violence, and safety to law enforcement. It is important for magistrates to know whether defendants are from Texas or live elsewhere, and considering citizenship status would be important to assess likelihood to appear in court. The bill also would direct magistrates to consider all information relevant to the statutory factors for setting bail, ensuring that a full picture of each defendant was considered.

Notice of bond conditions to local officials. The bill would help protect the public and law enforcement authorities by making sure information about bond conditions was sent to the community where a defendant lived.

Reporting bail and pretrial release information. SB 6 would improve transparency about bail decisions by requiring reporting on the amount and conditions of bail. Other requirements would give the public and legislators information to assess the bail system and to make changes if needed.

CRITICS SAY:

SB 6 would require the use of a public safety report that could delay some bail decisions and could impose an administrative burden on courts, would establish onerous requirements for some defendants to prove they cannot afford bail, and would reduce local discretion in using different types of bail bonds. The bill also would revise the rules for setting bail in a way that could be unfair to some defendants.

Several provisions would increase the number of individuals held in jail pretrial or the amount of time spent in jail pretrial, which goes against the presumption of innocence for these defendants. Keeping defendants in jail pretrial can have serious negative consequences for individuals, including job loss, an impact on health, family stress, and future interactions with the criminal justice system. Spending more time in jail pretrial also can lead to innocent individuals pleading guilty to get out of jail, and those in jail pretrial can be more likely to be sentenced to a term of incarceration if found guilty and to receive a longer sentence than others. More defendants spending longer in jails would be costly to counties, could be especially burdensome on rural and small jails, and could divert resources from other needs.

SB 6 could channel more defendants into the money bail system, which keeps some low-risk defendants in jail pretrial because they are unable to raise bail money and allows others who are a risk to the public but have resources to post bail and be released after an arrest. Increasing reliance on the money bail system could have a disproportionate impact on communities of color and could exacerbate racial or gender inequities tied

to the criminal justice system and to economic factors that relate to an individual's ability to pay bail.

Development, use of public safety report system. A statewide requirement to use a pretrial public safety report system could unfairly delay pretrial release for some defendants and result in the detention of some who otherwise would be released. Having to produce a public safety report in all cases involving a class B misdemeanor and higher could slow down processing and keep defendants in jail longer, possibly leading to jail crowding. Requiring a public safety report also could negatively impact how counties handle cases in which law enforcement officers issue a defendant a citation and summons to court for another date. While currently these defendants may be able to take care of their citations without going to jail, the bill could result in these defendants having to wait in jail while a public safety report was prepared and the process established by SB 6 played out.

The report might not result in a fair and accurate assessment of defendants because it would focus on information that could increase or restrict bail rather than mitigating factors or context for events. For example, the bill would require looking at previous failures to appear in court but would not require looking at the reasons for the failure. While failing to appear in court could involve a willful non-appearance in some cases, failure to appear may occur for other reasons such as transportation issues or work requirements. The look back at criminal history should have a reasonable time limit so that minor events decades in the past were not used against an individual, especially in a way that could exacerbate or perpetuate disparities in the criminal justice system.

Bail for defendant charged with offense committed while on bail. The bill's restrictions on who can set bail for certain defendants charged with committing a felony offense while released on bail for a felony could be too restrictive. In some cases, it might be appropriate to allow another court to make a decision about the second bond, especially since the bill would provide certain information for those setting bonds.

Action on bail decision. Requirements that those who cannot pay bail set by a bail schedule or standing order file an affidavit and a form with

financial information could present a barrier to affordable bail for many individuals. It could be difficult for some in jail to prove the inability to pay without outside assistance, and it would be unreasonable to expect those with disabilities or other issues to do so. The onus should be on the court to verify before setting bail that a defendant has the ability to pay the amount rather than on defendants to prove that they cannot afford bail.

The process in the bill requiring an affidavit and then potentially a hearing describes what might be considered an adversarial hearing with a person's liberty at stake, and that would trigger requirements that an indigent defendant be provided with an attorney. The state should recognize this and make provisions for providing attorneys, rather than wait for litigation to force such actions.

Jail populations could increase due to the time needed to fill out the forms and for a potential hearing on the issue, straining jail resources and increasing the negative effects on individuals of being in jail.

Prohibited release on personal bond. SB 6 would remove judicial discretion by prohibiting certain defendants from being released on a personal bond. It is unfair to categorically deny a type of bond to individuals who have only been accused and are presumed innocent. Public safety is best achieved when magistrates consider cases without restrictions on the type of bond that can be used to make bail. Judges and magistrates can be held accountable for decisions they make about releases on personal bond, and conditions such as electronic monitoring can be used for personal bonds in the same way as for monetary bonds to protect community safety.

The bill would set up a system that treated defendants unequally based on wealth. Individuals excluded from personal bonds under the bill could be given money bonds, allowing those with resources to buy their pretrial release from jail while keeping those without resources incarcerated. For defendants with limited means, even cash bonds set very low can be out of reach and result in pretrial incarceration.

The list of alleged offenses that would not be eligible for personal bonds is too broad and would eliminate options for magistrates to give personal

bonds in some appropriate situations. For example, SB 6 would prohibit personal bonds for a person with mental illness who was charged with a crime involving violence after behaving in a way that was not violent in intent but injured someone.

Rules for setting bail. The rules that SB 6 would require to be considered when setting bail might not provide enough context to result in a fair and accurate assessment of defendants. The rules, like the public safety report, would focus on information that could increase or restrict bail, rather than mitigating factors or context for events such as failure to appear in court or criminal history. The bill should not require that a defendant's citizenship status be considered because it could be used to discriminate against certain individuals and does not have a bearing on public safety.

OTHER CRITICS SAY:

SB 6 should include reporting requirements and limits on charitable bail organizations to increase transparency and accountability for these groups.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about $4.3 million to general revenue through the fiscal 2023.

SB 6 is the enabling legislation for SJR 3 by Huffman (Kacal), which is on today's Constitutional Amendment Calendar.

SUBJECT: Authorizing schools to offer local remote learning programs

COMMITTEE: Public Education — favorable, without amendment

VOTE: 9 ayes — Dutton, Lozano, Allison, K. Bell, Bernal, Buckley, Huberty, K. King, VanDeaver

1 nay — Allen

3 absent — M. González, Meza, Talarico

SENATE VOTE: On final passage, August 11 — 27-2 (Schwertner, Seliger)

WITNESSES: For — Jacob Reach, Austin ISD; Ana Rush, Del Valle ISD; Kurtis Indorf, Great Hearts Texas; Lora Stegner, National Coalition for Public School Options; Michael Hinojosa, Texas School Alliance and Texas Urban Council; Craig Chick, Yes. every kid; Marga Matthews; Julie Pickren; Chloe Stegner; (*Registered, but did not testify*: Julia Grizzard, Bexar County Education Coalition; Mandi Kimball, Children at Risk; Celeste Brown, Compass Rose Public Schools; Gavin Massingill, Edgenuity; Deirdre Walsh, IGC; Jacquelyn Padgett, In Good Company; Elizabeth Nelson, Lone Star Online Academy at Roscoe; Michelle Smith, Raise Your Hand Texas; Amanda List, ResponsiveEd; Jesus Chavez, South Texas Association of Schools; Madison Yandell, Texas 2036; Barry Haenisch, Texas Association of Community Schools; Whitney Broughton, Texas Association of School Boards; Jennifer Bergland, Texas Computer Education Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Suzi Kennon, Texas PTA; Brandon Garcia, Texas Public Charter Schools Association; Christy Rome, Texas School Coalition; Jonathan Saenz, Texas Values; and 22 individuals)

Against — Monty Exter, Association of Texas Professional Educators; (*Registered, but did not testify*: Carrie Griffith, Texas State Teachers Association; Idona Griffith; Emilie Kopp; Judah Rice)

On — Steven Aleman, Disability Rights Texas; Mike Morath, Texas Education Agency; (*Registered, but did not testify*: Jennifer Toon,

Coalition of Texans with Disabilities; Ryan Franklin, Educate Texas at Communities Foundation of Texas; Lukas McKenzie, Sigma Alpha Epsilon and Freemasons of Northern Nevada Lake Tahoe; Lonnie Hollingsworth, Texas Classroom Teachers Association; Von Byer and Monica Martinez, Texas Education Agency)

BACKGROUND:

Education Code ch. 30A establishes a state virtual school network that includes several full-time online schools for grades 3-12 approved by the Texas Education Agency and a catalog of supplemental online high school courses offered by TEA-approved providers to students enrolled in Texas public schools.

DIGEST:

SB 15 would authorize a school district or open-enrollment charter school to establish a local remote learning program to offer virtual courses outside the state virtual school network established under Education Code ch. 30A. The bill would require students enrolled in such courses to be counted toward the schools' average daily attendance in the same manner as other students. The bill would apply beginning with the 2021-2022 school year.

Local remote learning program. SB 15 would authorize a school district or charter school assigned an overall performance rating of C or higher for the preceding school year or the most recent school year in which a rating was assigned to operate a temporary local remote learning program to offer virtual courses outside the state virtual school network to eligible students.

A district or charter school that operated a full-time local remote learning program would have to include at least one grade level in which a state exam is required, including each subject for which an exam is required, or a complete high school program, including each course for which an end-of-course exam is required. A program also would have to offer the option for a student's parent to select in-person instruction for the student.

A district or charter school could not enroll in the remote learning program more than 10 percent of students enrolled in the district or charter school during the 2021-2022 school year. The education commissioner

could waive the enrollment cap on application by a district or charter school or in response to a public health emergency.

A virtual course offered under a remote learning program could be provided through synchronous instruction, asynchronous instruction, or a combination, and could be provided in combination with in-person instruction as appropriate to meet the needs of individual students.

Student eligibility. A student would be eligible to enroll in a virtual course if the student:

- was enrolled in a school district or charter school;
- had reasonable access to in-person services for the course at a district or school facility; and
- met any additional criteria, including minimum academic standards, established by the district or charter school in which the student was enrolled.

A district or charter school that offered a remote learning program would have to periodically assess the performance of students enrolled in the program's virtual courses. A district or charter school could return a student to in-person instruction if the student did not meet the criteria for enrollment and if there was a process to ensure that each student and parent had sufficient notice and opportunity to provide input before the student was removed from virtual courses.

Education Code ch. 30A provisions for the virtual school network would not apply to a virtual course offered under a local remote learning program. A student enrolled in a remote learning program would not be prohibited from enrolling in courses offered through the network.

Attendance. The bill would require a student enrolled in a virtual course offered under a local remote learning program to be counted toward the district's or charter school's average daily attendance in the same manner as other students. The commissioner would have to adopt rules providing for a method of taking attendance once each school day.

A district or charter school could adopt a policy to exempt students from state minimum attendance requirements for one or more courses offered under a remote learning program.

Teachers. A teacher could not provide instruction for a virtual course offered under a full-time local remote learning program unless the teacher had completed a professional development course on virtual instruction. A district or charter school could not:

- assign a teacher to the program unless the teacher agreed to the assignment in writing or if it was specifically stated in the teacher's employment contract;
- directly or indirectly coerce any teacher to agree to an assignment to the program; or
- require a teacher to provide both virtual instruction and in-person instruction for a course during the same class period.

STAAR exams. Schools would be required to administer STAAR exams to a student enrolled in a virtual course in the same manner in which the exams were administered to other students.

Accountability. SB 15 would require the commissioner to assign a local remote learning program separate overall and domain performance ratings as if the program were a campus of the district or charter school. Only students who spent at least half of their instructional time in virtual courses offered under the program would be considered enrolled in the program.

Special education. A district or charter school that offered virtual courses under a remote learning program for students receiving special education services would have to ensure the courses met the needs of a participating student in a manner consistent with state and federal laws governing education services for students with disabilities.

Extracurricular activities. A student enrolled in a virtual course offered under a local remote learning program could participate in an extracurricular activity sponsored or sanctioned by the district or charter

school in which the student was enrolled or by the University Interscholastic League in the same manner as other students.

Interlocal agreements. SB 15 would allow a school district or charter school to contract with another district or charter school to allow a student enrolled in the sending district or school to enroll in virtual courses offered under the local remote learning program of the receiving district or school. A student enrolled in virtual courses under such an agreement would be considered enrolled in the sending district or school for purposes of average daily attendance and accountability.

The bill's provisions for local remote learning programs would expire September 1, 2023.

Foundation School Program. SB 15 would add language to Education Code ch. 48 authorizing school districts and charter schools to provide certain off-campus courses and instructional programs and to have those courses and programs be counted toward the district's or school's average daily attendance.

In temporary provisions that would expire September 1, 2023, a district or charter school that operated during the 2020-2021 school year a full-time virtual program outside the state virtual network could:

- continue to operate the virtual program on a full-time basis;
- apply the same enrollment and transfer criteria used during the 2020-2021 school year; and
- offer the program to students in any grade level or combination of grade levels from kindergarten through grade 12 as long as the program included at least one grade level for which a state exam was administered.

Teacher certification. SB 15 would allow rules proposed by the State Board for Educator Certification to allow a candidate to satisfy certification requirements through an internship that provided the candidate employment as a teacher for courses offered through a local remote learning program or the state virtual school network. The provision would expire September 1, 2023.

The bill would take effect immediately if it received a vote of two-thirds of all the members elected to each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session.

SUPPORTERS SAY:

SB 15 would provide an option for school districts and charter schools to design virtual learning courses around the needs of their students and to receive full average daily attendance funding for students enrolled in those courses. This temporary local option would address the demand for online learning by families concerned about their children attending in-person classes during the ongoing pandemic.

When the COVID-19 pandemic began, schools were forced to scramble to offer instruction online. While online learning led to academic losses for some students, others thrived in a virtual learning setting. SB 15 would allow districts and charter schools to implement best practices, including requiring remote courses be taught by a teacher trained in providing virtual education. The bill would protect teachers from burnout by prohibiting schools from requiring them to simultaneously teach students in class and at home.

The program created by the bill is a needed alternative to the Texas Virtual School Network, a statewide program of several full-time online schools that has a mixed record of academic success. SB 15 would better serve online students by ensuring they could access their local campus for in-person programs such as special education services or technical courses and could participate in school extracurricular activities.

The bill would include guardrails to ensure students received a high-quality learning experience, including restricting full-time local remote learning programs to school districts and charter schools with an academic rating of C or higher. School officials could set minimum academic criteria for students enrolling in their virtual courses and require them to return to in-person learning if they were not succeeding in a remote program. By requiring districts to designate their local remote learning programs as a separate campus for accountability ratings, educators and policymakers would be able to compare their performance to in-person campuses.

During the 2020-2021 school year districts and charter schools received full funding for students learning remotely when the education commissioner waived classroom attendance requirements. Legislation enacted during the regular session of the 87th Legislature curbed the commissioner's authority to continue the attendance waiver for the 2021-2022 school year. The bill would count students who were learning remotely the same as those in the classroom for school funding purposes.

The provisions for local remote learning programs would expire September 1, 2023. Lawmakers could decide to continue the program after they receive a report from the Texas Commission on Virtual Education, which was created during the regular session by HB 3643 by K. King. The commission's report is due December 31, 2022.

CRITICS SAY:

SB 15 would implement a learning model that has been proven by declining STAAR scores to be ineffective for the majority of students. Educators recognize that virtual schools have been necessary for health and safety reasons during the pandemic and could be necessary during future emergencies, but many experts agree that there is no substitute for in-person learning. Too many students have suffered significant learning loss and emotional trauma as a result of disruptions to in-person learning. Texas should move with caution before rapidly expanding online learning by requiring a study and pilot program.

Concerns about how to fund students who are not attending school in person could be addressed through state appropriations rather than by enacting SB 15, which could give districts a financial incentive to expand their virtual offerings even if they are not as effective for students as in-person learning.

NOTES:

The House companion bill, HB 30 by K. Bell, was referred to the House Public Education Committee on August 23.

SUBJECT: Making a one-time supplemental payment to retired educators

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 22 ayes — Bonnen, M. González, Ashby, C. Bell, Capriglione, Dean, Dominguez, Gates, Holland, Howard, A. Johnson, Julie Johnson, Morrison, Raney, Rose, Schaefer, Stucky, E. Thompson, VanDeaver, Walle, Wilson, Zwiener

0 nays

5 absent — Jarvis Johnson, Minjarez, Sherman, Toth, Wu

SENATE VOTE: On final passage, August 9 — 29-0

WITNESSES: For — Timothy Lee, Texas Retired Teachers Association; Monty Exter, The Association of Texas Professional Educators; Craig Campbell; (*Registered, but did not testify*: Kevin Stewart, American Association of University Women of Texas; Eva DeLuna Castro, Every Texan; Dena Donaldson, Texas American Federation of Teachers; Ann Fickel, Texas Classroom Teachers Association; Laura Atlas Kravitz, Texas State Teachers Association; Ash Hall; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Brian Guthrie, Teacher Retirement System of Texas)

BACKGROUND: Government Code sec. 821.006 prohibits certain actions, including a new monetary benefit payable by the Teacher Retirement System of Texas, if the action would increase the time required to amortize the unfunded actuarial liabilities of the retirement system to a period that exceeds 30 years by one or more years, as determined by an actuarial valuation.

DIGEST: SB 7 would require the Teacher Retirement System of Texas (TRS) to make a one-time supplemental payment of a retirement or death benefit to

certain retirees. TRS would be required to make a supplemental payment only if there was a sufficient legislative appropriation.

The supplemental payment would be equal to the lesser of:

- the gross amount of the regular annuity payment to which the eligible annuitant was otherwise entitled for the calendar month immediately prior to the calendar month in which TRS issued the one-time supplemental payment; or
- $2,400.

The supplemental payment would be payable not later than January 2022 and, to the extent practicable, on a date or dates that coincided with the regular annuity payment payable to each eligible annuitant. The supplemental payment would be payable without regard to any forfeiture of benefits due to the resumption of service and would require TRS to make applicable tax withholding and other legally required deductions from the payment.

An annuitant would be eligible to receive the one-time supplemental payment if, for the calendar month immediately prior to the calendar month in which TRS issued the payment, the annuitant was eligible to receive:

- a standard retirement annuity payment;
- an optional retirement annuity payment as either a retiree or beneficiary;
- a life annuity payment received by the designated beneficiary of an active TRS member who died;
- an annuity for a guaranteed period of 60 months received by the designated beneficiary of a member who died; or
- an alternate payee annuity payment in lieu of benefits awarded by qualified domestic relations order.

If the annuitant was a retiree or a beneficiary under an optional retirement payment plan, to be eligible for the supplemental payment, the effective date of the retirement of the TRS member would have to have been on or

before December 31, 2020. If the annuitant was a beneficiary of an active member who died, the date of death of the TRS member would have to have been on or before December 31, 2020. If the annuitant was an alternate payee under a qualified domestic relations order, the annuity payment to the alternate payee would have to have commenced on or before December 31, 2020.

The supplemental payment would not apply to:

- disability retirees with less than 10 years of service credit;
- deferred retirement option plan with regard to payments from their plan accounts;
- retiree survivor beneficiaries who receive a survivor annuity in an amount fixed by statute; or
- active member survivor beneficiaries who receive a survivor annuity in an amount fixed by statute.

The TRS Board of Trustees would have to determine the eligibility for and the amount and timing of a supplemental payment and the manner in which the payment was made.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session.

SUPPORTERS SAY:

SB 7 would boost the retirement benefits for retired teachers and other school employees by providing a one-time supplemental payment. This "13th check" of up to $2,400 would help retired educators, most of whom do not receive Social Security, pay their bills. Teachers dedicated their careers to making a difference in the lives of their students and this extra payment would recognize their hard work.

The Legislature in 2019 made contribution increases and other changes to improve the stability of the Teacher Retirement System of Texas (TRS), which now has a funding period of 26 years and is considered actuarially sound. This would be the second 13th check in three years for most TRS retirees and represents a significant boost to their benefits. The supplemental payment would be made only if the Legislature makes a

sufficient appropriation, and a proposal to use general revenue to fund the $701.1 million cost of the 13th check would preserve the TRS pension fund from any actuarial impact.

Some have called for a permanent cost-of-living adjustment to TRS retiree benefits, and a COLA could be considered in future legislative sessions. The 13th check would provide funds to help retired school employees now, while a COLA would be paid out over time. The amount required for a 6 percent COLA would be $3.6 billion if paid for up front and more than $18 billion if it was financed through the pension fund. It would not be financially prudent at this time to require a COLA, especially if it would negatively impact the actuarial soundness of the pension fund.

CRITICS SAY:

While SB 7 would represent an important financial benefit for TRS retirees, instead of the one-time supplemental payment, the Legislature instead should consider providing retired educators with a permanent cost-of-living increase. Teacher retirees have not received a COLA since 2013 when members who retired before September 1, 2004, received a 3 percent COLA that was financed through the pension fund. At a time when the Legislature is considering spending billions of dollars for border security, the state has sufficient funds to give teachers the COLA they deserve.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of $701.1 million to general revenue through fiscal 2023. CSHB 5 by Bonnen, which was reported favorably as substituted from the House Appropriations Committee on August 24, would appropriate $701.1 million in general revenue for the one-time supplemental payment to retired educators, contingent on enactment of SB 7 or similar legislation.